

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GEORGE KIMEMIAH,)	
)	
Plaintiff,)	Civil Action No.: 1:13-cv-04156-AT
)	
v.)	
)	
SUN VALLEY TECH SOLUTIONS,)	
INC. and ADP TOTALSOURCE INC.,)	
)	
Defendants.)	

COMPLAINT

COMES NOW, the Plaintiff, George Kimemiah ("Kimemiah"), (hereinafter "Kimemiah" or "Plaintiff") by and through his undersigned counsel, and files this lawsuit against the Defendants, Sun Valley Tech Solutions, Inc., ("Sun Valley") and ADP TotalSource, Inc., ("ADP") (hereinafter Sun Valley and ADP are referred to collectively as "Defendants"). This action is brought on behalf of Plaintiff pursuant to § 216(b) of the Fair Labor Standards Act of 1938 (hereinafter "FLSA"), and in support thereof would further state as follows:

I. INTRODUCTION

1. The instant action arises from Defendants' violations of Plaintiff's rights under the Fair Labor Standards Act, 29 U.S.C.A. §§ 201, et seq., as amended

(hereinafter "the Act"), and specifically the collective action provision of the Act found at § 216(b), to remedy violations of the overtime provisions of the FLSA by Defendants which have deprived the Plaintiff of his lawful overtime wages.

2. This action brought to recover unpaid overtime compensation owed to the Plaintiff who was co-employed by Sun Valley and ADP as a "Field Systems Engineer" (including, without limitation, those duties substantially similar to those of a Field Systems Engineer as described in **Exhibit A** hereof) pursuant to the FLSA. The Plaintiff was co-employed by Defendants, Sun Valley and ADP, performing duties as a Field Systems Engineer in Defendants' business of integrating call center technologies for numerous call center software providers in the State of Georgia and in various locations throughout the United States.

3. For at least three years prior to the filing of this Complaint, Sun Valley and ADP acting as co-employers have willfully committed violations of the FLSA by failing to compensate Plaintiff at an overtime rate for hours worked in excess of 40 hours in a given workweek and willfully concealed its violations of the FLSA.

4. Plaintiff seeks unpaid overtime compensation for work performed, an equal amount of liquidated damages, attorney's fees and costs pursuant to 29 U.S.C. § 216(b).

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 29 U.S.C. § 216(b) (FLSA).

6. Venue is proper in the Northern District of Georgia under 28 U.S.C. § 1391 (b)-(c) because some of the acts complained of occurred within the State of Georgia.

III. PARTIES

7. Plaintiff George Kimemiah resides in Powder Springs, Georgia and is a citizen of the United States. Kimemiah was co-employed by Sun Valley and ADP as a Field Systems Engineer with duties as defined in the exhibits attached hereto and regularly performed his job duties as an employee of Defendants within the State of Georgia and this District.

8. At all times material to this action, Plaintiff was an "employee" of both Sun Valley and ADP as defined by § 203(e)(l) of the FLSA, and worked for said Defendants within the United States within three years preceding the filing of this lawsuit. Plaintiff is further covered by § 206 and § 207 of the FLSA for the period in which he was employed by the said Defendants.

9. Defendant Sun Valley Tech Solutions, Inc. is, on information and belief, an Arizona corporation with its principal offices located at 10850 E. Renata Circle, Mesa, Arizona 85212. Sun Valley regularly conducts business in the State

of Georgia and in this District.

10. Defendant ADP TotalSource, Inc. is, on information and belief, a Florida Corporation with its principal offices located at 10200 Sunset Drive Miami, Florida 33173. ADP regularly conducts business in the State of Georgia and in this District.

11. Sun Valley and ADP co-employed Plaintiff. Said Defendants maintain either actual or constructive control, oversight and direction over the operations of its field service engineering services, including the employment and practices of those operations.

12. Sun Valley is subject to personal jurisdiction in the State of Georgia for purposes of this lawsuit and can be served through its registered agent Joshua Lee at 10850 E. Renata Circle, Mesa, AZ 85212-2522.

13. ADP is subject to personal jurisdiction in the State of Georgia for purposes of this lawsuit and can be served through its registered agent National Registered Agents, Inc. at 1201 Peachtree Street NE, Suite 1240 Atlanta, GA 30361.

14. At all times material to this action, Defendants were engaged in commerce as defined by § 203(b)(1) of the FLSA.

15. At all times material to this action, Sun Valley and ADP acted pursuant to written agreements as co-employers of Plaintiff and therefore both said

Defendants are classified as an "employer" of the named Plaintiff, as defined by § 203(d) of the FLSA.

16. The overtime provisions set forth in § 207 of the FLSA apply to Defendants.

IV. VIOLATIONS OF THE FLSA

17. During the period of time material to this action, Defendants employed Plaintiff Kimemiah as a Field Service Engineer.

18. Plaintiff was employed as a Field Service Engineer pursuant to the written agreement with Sun Valley attached as **Exhibit A** and as such was responsible for installing computer software for designated customers and clients of Defendants.

19. By separate written agreement attached as **Exhibit B**, Plaintiff was co-employed by Defendant ADP.

V. COUNT ONE

(Fair Labor Standards Act: 29 U.S.C.A. §§ 201, et seq.)

20. The Plaintiff repeats and incorporates by reference paragraphs 1-24 herein.

21. By its actions alleged herein, Defendants willfully, knowingly and/or recklessly violated the FLSA provisions and corresponding federal regulations.

22. Defendants have willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by failing to pay overtime compensation to current and former employees, including George Kimemiah, in accordance with § 207 of the FLSA.

23. As a result of Defendants' violations of the FLSA, Plaintiff George Kimemiah has suffered damages by failing to receive overtime wages in accordance with § 207 of the FLSA.

24. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff George Kimemiah. In fact, Defendants have willfully, intentionally, and knowingly failed to comply with the FLSA.

25. As a result of the violations of the FLSA by the Defendants, Plaintiff George Kimemiah has been deprived of overtime compensation in an amount to be determined at trial, and is entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees and costs.

VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, pursuant to §216(b) of the FLSA, prays for the following relief:

- A. That Plaintiff be awarded damages in the amount as allowed by the FLSA and cases interpreting same, plus an equal amount of liquidated damages; and,
- B. That Plaintiff be awarded prejudgment interest; and,
- C. That Plaintiff be awarded reasonable attorneys' fees; and,
- D. That Plaintiff be awarded for costs and expenses of this action; and,
- E. That Plaintiff be awarded such other, further legal and equitable relief, including but not limited to, any injunctive and/or declaratory relief to which they may be entitled.

DEMAND FOR TRIAL BY JURY

Comes now the Plaintiff, George Kimemiah, by counsel, and requests a trial by jury on all issues deemed so triable.

Respectfully submitted this 16th day of December, 2013.

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